IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.326 OF 2006

Bhavesh Gulabrai Thakkar .. Appellant

versus

Smt. Prabhavati G. Kanji Thakkar & Ors. .. Respondent

...

Mr. Prasad S. Dani for appellant.

Mr. J. Narula for respondents.

CORAM : D.G. KARNIK, J

DATED :5th October, 2006.

P.C:-

1. Heard learned counsel for the parties.

2. This appeal is directed against the order dated 4th March, 2006 passed by the city civil court dismissing appellant's motion for restoration of the suit.

3. Appellant filed a suit bearing suit no.6326 of

2001 against the respondents in the city civil court, Mumbai. On 6th October, 2004 the suit was dismissed under Order 9 Rule 2 of the Code of Civil Procedure. The appellant took out a motion for restoration purportingly under Order 9 Rule 4 of the Code of Civil Procedure. That motion has been dismissed. An order passed under Order 9 Rule 4 is not appellable under Order 43 of the Code of Civil Procedure. In view of this the learned counsel for the appellant seeks leave to withdraw the appeal with permission to file appropriate proceedings before the appropriate forum. Leave is granted.

4. Appeal is disposed of as withdrawn.

(D.G. KARNIK, J.)